



CHAIRMAN

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UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

November 22, 2004

The Honorable Edward J. Markey  
United States House of Representatives  
Washington, D.C. 20515


Dear Congressman Markey:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your letter of October 12, 2004, regarding the decision of the Nuclear Energy Institute (NEI) to hire Wackenhut Corporation to perform as mock terrorists in force-on-force (FOF) evaluations at nuclear power reactors. The Commission approved the use of an industry-provided mock adversary force that is qualified to standards established by the NRC based on the staff's conclusion that this alternative would present a credible, well trained, and consistent mock adversary force. It was also determined that this approach would provide secondary benefits to licensee programs by enhancing protective strategies and security officer training.

I appreciate your concerns and welcome this opportunity to describe the Commission's activities in conducting force-on-force evaluations of facility licensees' security programs. The active participation of stakeholders in the regulatory process to facilitate effective and efficient resolution of issues has been, and continues to be, a beneficial policy of the Commission and does not represent an abdication or outsourcing of the Commission's unique responsibilities. The Commission closely monitors the staff's interactions with the industry to ensure that its regulatory processes related to nuclear power plant security are not compromised by inclusion of voluntary industry initiatives and that such interactions remain consistent with the Commission's fulfillment of its responsibilities for protection of public health and safety and the common defense and security.

Answers to your specific questions are enclosed. The enclosure contains information currently considered by the NRC as Official Use Only (OUO) and should not be disclosed to the public. Access to this information should be limited to individuals that need-to-know the information in order to perform official NRC or other Government functions. Please feel free to contact me with any questions.

Sincerely,



Nils J. Diaz

Enclosure: As stated

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**NRC RESPONSE TO QUESTIONS FROM CONGRESSMAN EDWARD MARKEY  
DATED OCTOBER 12, 2004 REGARDING  
FORCE-ON-FORCE EXERCISES AT NRC-LICENSED FACILITIES**

Question 1

In your response, you indicated that NRC staff had considered several options for creating a mock terrorist team before deciding to allow NEI to do so itself.

- a) Please fully describe all such options.
- b) Which option did NRC staff recommend to the Commission?
- c) Did the Commission vote on this matter? If so, how did each Commissioner vote?
- d) Please provide copies of all correspondence, emails, memoranda and telephone logs in the possession of the NRC, including those received by and sent to representatives of the nuclear industry, regarding the NRC decision to i) allow the nuclear industry to hire the mock terrorist team and ii) allow NEI to choose Wackenhut.

Answer 1

a-b) The staff presented to the Commission five options and a recommendation for improving the adversary force in FOF exercises in a paper titled "Adversary for Force-on-Force Exercises at NRC-licensed Facilities," SECY-03-0208, dated December 3, 2003. This paper is provided as Attachment A. The subsequent Staff Requirements Memorandum (SRM) directing the staff to implement its recommended option and prepare to implement a contingency option is provided as Attachment B.

The staff recommended and the Commission approved the establishment of adversary force standards and guidelines for the industry as a group. The industry would select and train a pool of personnel for the adversary force cadre. Members of this pool would be assigned to specific mock adversary force teams. In evaluating the recommendation for adversary force teams, staff considered several important factors including skills and training and their ability to carry out their duties with professionalism and without undue influence.

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Regarding skills and training, NRC identified a need to improve the offensive abilities, consistency, and effectiveness of the exercise adversary force. To address that need, the NRC has issued standards for physical fitness, training, and knowledge of attack strategies to ensure that the mock adversary forces will be trained in offensive, rather than defensive skills. The selection of a contractor with an extensive history of training and qualifying security officers for the nuclear industry should ensure that they will bring a high level of skill to bear on the exercises. One benefit of the mock adversary force comprised of industry personnel is the feedback of the mock adversary force's perspective into enhancement of site protective strategies, security officer training, and improving the quality of force-on-force exercises conducted by the licensees annually.

c) The individual Commissioner's notation vote sheets are provided as Attachment C.

d) The requested copies of correspondence regarding the decision to i) allow the nuclear industry to hire the mock terrorist team and ii) NEI's decision to choose Wackenhut are provided as Attachments A-D. Attachment D includes SECY-04-0174, "Final Report on the Transitional Force-on-Force Exercise Program," which was originally Safeguards Information. The Safeguards portions of the document were unrelated to the mock adversary force selection and have been removed. This document should now be treated as Official Use Only, and is not publicly available.

Question 2

In your response, you maintained that a conflict-of-interests would be avoided through the use of several commitments made by the NEI to the NRC on September 10, 2004, such as the promise to have the head of the mock terrorist team report directly to Wackenhut's CEO, and a promise not to have a member of the mock terrorist team participate in an exercise at his or her home site.

- a) Please provide a copy of the September 10, 2004 NEI letter to the NRC.
- b) How will NRC ensure that no member of the mock terrorist team participates in an exercise at his or her home site?
- c) What recourse does the Commission have if these promises are not upheld? Can the Commission legally fire Wackenhut? Can the Commission legally require NEI to fire Wackenhut? Can the Commission legally impose monetary penalties or other enforcement actions on either Wackenhut or NEI if these promises are not upheld? If the answer to any of these questions is 'no', then exactly what assurance does this September 10, 2004, letter provide?

Answer 2

- a) The requested September 10, 2004 NEI letter to the NRC is provided as Attachment E.
- b) To ensure that no member of the mock terrorist team participates in an exercise at his or her home site, the staff has included a review of the mock terrorist team composition in its Inspection Procedure (IP) 71130.03, "Contingency Response - Force-on-Force Testing." The IP was revised to incorporate the lessons learned during the pilot expanded FOF and transitional FOF programs conducted during 2003 and 2004 respectively, and will be fully implemented before beginning evaluated FOF exercises in November 2004. The mock adversary force composition review will be conducted during an exercise planning visit to the site approximately two weeks before the FOF exercises are conducted.
- c) If the mock adversary force composition review were to reveal that a member is scheduled to support the evaluated FOF exercise at his or her home site, the NRC team leader would require removal of that individual from the mock adversary team. If the mock adversary team could not provide an adequate force using exclusively personnel from other sites, the NRC would have the option of rescheduling the evaluated FOF exercise.

It is important to emphasize that the NRC, not the mock adversary force, designs, runs, and evaluates the results of the FOF exercises. Because the mock adversary force does not establish the exercise objectives, boundaries, or timelines, and because the mock adversary force's performance is subject to continual observation by NRC's staff and contractors, the NRC can control the exercise. NEI's commitments do provide additional assurance that Wackenhut's performance as the mock adversary force will be independent of its protective function at licensees' facilities. Nonetheless, any indication that the mock adversary force members are not performing rigorously in their role will be promptly identified and addressed by the NRC.

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The NRC routinely reassesses the effectiveness and efficiency of its FOF evaluation program and has mechanisms in place to revise or improve its FOF processes and procedures as needed. Should industry be unable to maintain an adequate and objective mock adversary force that meets the standards mandated by the NRC, the NRC will take the necessary actions to ensure the effectiveness of the force-on-force evaluation program. The Commission could, for instance, discontinue its acceptance of the current approach and pursue alternatives. The necessary actions would depend upon the circumstances presented at that time.

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Question 3

The federal regulations surrounding organizational conflicts-of-interests (48 CFR 2009) state the following: 'Organizational conflicts of interest means that a relationship exists whereby a contractor or prospective contractor has present or planned interests related to work to be performed under an NRC contract which: (1) may diminish its capacity to give impartial, technically sound, objective assistance and advice, or may otherwise result in a biased work product; or (2) may result in its being given an unfair competitive advantage. Potential conflict of interest means that an actual conflict of interest may arise from award of a proposed contract.'

Subpart 2009.570-3, "Criteria for recognizing contractor organization conflicts of interest, "poses the following question to be answered when determining if an organizational conflict of interest exists: 'Are there conflicting roles which may bias an offeror's or contractor's judgment in relation to its work for the NRC?'

This legal requirement is incorporated into NRC contracts. For example, NRC Contract No. NRC-04-04-072 dated April 21, 2004, with Advanced Systems Technology & Management contains this clause in Section H.1, "Contractor Organizational Conflicts of Interest (Jan 1993)": "The contractor may not represent, assist, or otherwise support an NRC licensee or applicant undergoing an NRC audit, inspection, or review where the activities that are the subject of the audit, inspection, or review are the same as or substantially similar to the services within the scope of this contract (or task order as appropriate) except where the NRC licensee or applicant requires the contractor's support to explain or defend the contractor's prior work for the utility or other entity which NRC questions."

- a) Given the above, please provide a legal opinion as to whether the NRC could have entered into a contract with Wackenhut to act as a mock terrorist force in light of Wackenhut's role in providing security guard force services at about half of all operating reactors.
- b) If your conclusion is that an NRC contract with Wackenhut would not have posed a conflict-of-interests, please fully explain why not.
- c) If your conclusion is that an NRC contract with Wackenhut would in fact pose a conflict-of-interests, please justify your decision to allow NEI to do what would be illegal for the NRC to do itself.

Answer 3

- a) As reflected in our October 1, 2004 response to your earlier questions, in developing the current FOF program, we adhered to our historic regulatory approach of establishing the standards and guidelines which the industry, in turn, is responsible for carrying out, subject to our continuing oversight. In this regard, only broad, programmatic consideration of conflict-of-interest issues was given, and the NRC's acquisition regulations do not apply. Thus, it would be

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unproductive and inappropriate for us to speculate on what, among other issues, the possible outcome of a conflict-of-interest determination could have been, or whether, as you ask, "... the NRC could have entered into a contract with Wackenhut ...."

b) See Answer to Question 3. a), above.

c) See Answer to Question 3. a), above.

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Question 4

At a September 8, 2004, event surrounding the premiere of the documentary "Indian Point: Imagining the Unimaginable", Commissioner McGaffigan maintained that the only reason why the Commission allowed NEI to hire Wackenhut instead of establishing its own mock terrorist team is because it lacked \$3 million.

- a) Is this true?
- b) Did the NRC ever request that such funds be made available by Congress? If so, please provide details of any such requests, including copies of any testimony by the NRC specifically calling for these funds, any correspondence asking for such funds or warning of the consequences of failing to provide them, as well as the results of the requests.
- c) Did NRC request that instead of hiring Wackenhut, that NEI provide funds to the NRC, so that NRC could then hire its own mock terrorist force or enter into an arrangement with another federal agency? If so, please provide details of any such requests, including copies of any correspondence as well as the results. If not, why not?
- d) If Congress did provide these funds in the future, would the Commission cease using the nuclear industry's mock terrorist force? If not, why not?

Answer 4

- a) NRC's cost was only one factor considered in the Commission's decision to implement an industry provided mock adversary force. The Commission approved the staff's recommendation, which was based on conclusions that the industry alternative would satisfy the objective of the FOF program and would provide such valuable secondary benefits as the ready availability of a pool of highly trained security professionals with experience in nuclear power plant security issues, feedback by former mock adversary force members of the adversary's perspective into both the enhancement of site protective strategies and security officer training, and improvement in the quality of force-on-force exercises conducted by the licensees annually. The Commission is routinely updated on progress in resolving any issues related to implementation of the industry provided mock adversary force.
- b) The NRC has not requested that additional funds be made available by Congress to establish its own mock terrorist team. Pursuant to Staff Requirements SECY-03-0208 (Attachment B) the staff has, as a contingency plan, estimated the cost of an NRC provided mock adversary force. An estimated \$4.3 million would be needed annually to implement that contingency plan.
- c) The NRC did not request that NEI provide funds to the NRC in lieu of hiring Wackenhut as NEI's contractor. Putting aside the fact that the Miscellaneous Receipts Act (31 U.S.C. 3302) would preclude the NRC from accepting NEI provided funds for the NRC to hire its own mock terrorist force, the Commission chose to proceed under the current arrangement -- namely, where NRC established adversary force standards and guidelines for the industry as a group, and the industry selected and trained a pool of personnel for the adversary force cadre (Alternative 3 in Attachment B) -- as satisfactorily meeting NRC's oversight objectives for FOF programs.



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d) The Commission would continue to fulfill its statutory responsibilities. Discretionary decisions would involve consideration of the circumstances at that time.

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Question 5

In my August 23, 2004, letter, I requested copies of all correspondence, e-mails, memoranda and telephone logs in the possession of the NRC, including those received by and sent to representatives of the nuclear industry, regarding the NRC decision to withhold this information from the public. Your October 1, 2004, response stated that these materials would be provided under separate cover. I urge you to provide these materials promptly.

Answer 5

The requested copies of correspondence regarding the NRC decision to withhold security-related reactor oversight program information from the public are provided as Attachment F. Documents identified in Attachment F are considered Official Use Only, and are not publicly available. They have been identified in response to a Freedom of Information Act request and are currently under review by the NRC for a release determination.

## Summary of Attachments

### Official Use Only (OUO) Documents are not for public disclosure

- A SECY-03-0208, "Adversary for Force-on-Force Exercises at NRC-Licensed Facilities" (OUO)
- B Staff Requirements - SECY-03-0208, "Adversary for Force-on-Force Exercises at NRC-Licensed Facilities" (OUO)
- C Commission Voting Record, SECY-03-0208, "Adversary for Force-on-Force Exercises at NRC-Licensed Facilities" (OUO)
- D SECY-04-0174, "Final Report on the Transitional Force-on-Force Exercise Program" (OUO)

EDO memorandum - "The Staff's Schedule for Developing Adversary Force Standards and Issuing Implementation Guidelines for Alternative 3 as described in SECY-03-0208," dated January 23, 2004 (OUO)

SECY-04-0136, "Personnel Security Vetting of Industry Composite Adversary Force Members for Force-on-Force Exercises at NRC-Licensed Power Reactor Facilities" (OUO)

Letter from Rathbun (NRC) to Senator Domenici, dated September 14, 2004, regarding force-on-force exercises at power reactor facilities (not publicly available)

Letter from Chairman Diaz (NRC) to Representative Shays, dated October 14, 2004, regarding the testimony of Luis Reyes and other security issues at NRC licensee's (publicly available)

Letter from Reyes (NRC) to Brian (POGO) dated September 30, 2004, regarding NEI's decision to hire Wackenhut Corporation to supply and manage the composite adversary force (publicly available)

Letter from Chairman Diaz (NRC) to Representative Markey, dated October 1, 2004, regarding changes in force-on-force exercises at nuclear power plants (publicly available)

Draft Staff Requirements Memorandum - SECY-03-0208, "Adversary for Force-on-Force Exercises at NRC-Licensed Facilities," and e-mails from NRC staff members (OUO)

Ex. 5

Draft Staff Requirements Memorandum - SECY-03-0208, Version B, "Adversary for Force-on-Force Exercises at NRC-Licensed Facilities," and e-mails from NRC staff members (OUO)

Ex. 5

- E Letter from Floyd (NEI) to Zimmerman (NRC) dated September 10, 2004 regarding Composite Adversary Force quality concerns (publicly available)

- F Memorandum from Chairman Diaz to William D. Travers, "Policy Issues Regarding Transparency of Security and Physical Protection Under the Reactor Oversight Process (ROP) and the Need for Revision of the Physical Protection Significance Determination Process (PPSDP) dated November 10, 2003.

SECY-04-0020, "Treatment of Physical Protection Under the Reactor Oversight Process" (OUO)

Staff Requirements Memorandum - SECY-04-0020, "Treatment of Physical Protection Under the Reactor Oversight Process" (OUO)

Commission Voting Record, SECY-04-0020, "Treatment of Physical Protection Under the Reactor Oversight Process" (OUO)

Draft Staff Requirements Memorandum - SECY-04-0020, "Treatment of Physical Protection Under the Reactor Oversight Process," dated March 23, 2004, and e-mails from NRC staff members (OUO)

Ex. 5

Draft Staff Requirements Memorandum - SECY-04-0020, Version B, "Treatment of Physical Protection Under the Reactor Oversight Process," dated March 29, 2004, and e-mail from NRC staff members (OUO)

Ex. 5